

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SIETEL SINGH GILL, individually and on behalf
of other similarly situated individuals,

Plaintiffs,

v.

NATIONAL FOOTBALL LEAGUE, and NFL
ENTERPRISES LLC,

Defendants.

Case No. 1:21-cv-01032-PAE

DECLARATION OF MAX BOIGON

MAX BOIGON declares, pursuant to the provisions of 28 U.S.C. § 1746:

1. This declaration is being submitted in support of the National Football League and NFL Enterprises LLC's motion for summary judgment. I make this declaration based on personal, first-hand knowledge of the facts and circumstances set forth herein and my review of NFL business records that I am familiar with.
2. I am the Senior Director of Direct to Consumer with NFL International Licensing Inc. and have held this position since 2020. Prior to my role as Senior Director of Direct to Consumer, I held the position of Director of Subscription Products with NFL International LLC as of April 2018. Before joining NFL International LLC, I held the position of Head of Product Marketing with NFL Enterprises LLC from June 2016 until April 2018.
3. I submit this declaration in addition to the testimony I provided in the above captioned matter on March 4, 2022.
4. In connection with discovery in this matter and in support of the National Football League and NFL Enterprises LLC's motion for summary judgment, I directed our Media Intelligence team to extract data relating to Gill's subscriptions to Game Pass Season Plus

(2013-2016) and Game Pass Season Plus Pass (2017-2018).¹ The data, which was provided to the NFL by Endeavor during the time when it operated Game Pass internationally, is stored in an internal NFL database and, for each of Gill's subscriptions to Game Pass for the 2013 through 2018 NFL seasons, includes but is not limited to the subscription start and end dates, the subscription product name, the payment amount, the payment method, and whether or not the payment was made by auto renewal.

5. I am familiar with this data and records like this based on my prior roles with NFL Enterprises LLC and NFL International LLC, and as Senior Director of Direct to Consumer with NFL International Licensing Inc.
6. Attached as Exhibit A to this declaration is a true and correct copy of Gill's subscription information as described above.
7. The record shows that Gill first signed up for a Game Pass subscription in September 2013, when he purchased for \$204.99 a Game Pass Season Plus subscription for the 2013 NFL season running from September 9, 2013 through August 1, 2014. See Exhibit A, Subscription Order Tab, Columns U, AH, and AI. Gill's subscriptions to Game Pass Season Plus for each of the 2014 through 2016 NFL seasons were then made by automatic payment renewal. See Exhibit A, Subscription Order Tab, Column AK.
8. Gill's automatic payments for his subscriptions to Game Pass Season Plus for the 2014, 2015, and 2016 NFL seasons were each paid by an American Express credit card on August

¹ The name of the subscription product Gill subscribed to changed starting with the 2017 NFL Season when the right to "manage, operate, offer, and sell Game Pass" was licensed to Perform Media Channels Ltd. See Joint Stipulation of Undisputed Facts, Ex. A, Doc. No. 70-1, p. 10. Subsequently, when the license was granted to OverTier Operations for the 2019 NFL Season, the name of the subscription product Gill subscribed to with OverTier in 2019 was "Game Pass Season Pro."

1, 2014 (\$214.99), August 7, 2015 (\$254.99), and August 5, 2016 (\$264.99). See Exhibit A, Subscription Order Tab, Columns AY.

9. The record shows that Gill purchased a subscription for the 2014 NFL Season running from August 1, 2014 through August 1, 2015. See Exhibit A, Subscription Order Tab, Columns U, AH, and AI.
10. The record shows that Gill purchased a subscription for the 2015 NFL Season running from August 7, 2015 through August 1, 2016. See Exhibit A, Subscription Order Tab, Columns U, AH, and AI.
11. The record shows that Gill purchased a subscription for the 2016 NFL Season running from August 5, 2016 through August 1, 2017. See Exhibit A, Subscription Order Tab, Columns U, AH and AI.
12. The record shows, however, that when Gill subscribed to Game Pass Season Plus Pass for the 2017 NFL Season, he did not do so by automatic payment renewal. See Exhibit A, Subscription Order Tab, Columns H, S, and AK.
13. Rather, on September 10, 2017, Gill registered for a seven (7) day free trial period for Game Pass Season Plus Pass. See Exhibit A, Subscription Order Tab, Column S. On September 17, 2017, following completion of the free trial, Gill's credit card was charged \$279.99 for the full season subscription. The credit card that was charged was a Visa credit card, which was different from the American Express card he had used to subscribe in prior seasons. The record shows that Gill purchased a subscription for the 2017 NFL Season running from September 10, 2017 through August 1, 2018. See Exhibit A, Subscription Order Tab, Columns U, AH and AI.

14. The record also shows that when Gill subscribed to Game Pass Season Plus Pass for the 2018 NFL Season, he also did not do so by automatic payment renewal.
15. Rather, on August 1, 2018, Gill made a one-time payment for Game Pass Season Plus Pass for the 2018 NFL Season with a Visa credit card in the amount of \$274.99. The record shows that Gill purchased a subscription for the 2018 NFL Season running from August 1, 2018 through August 1, 2019. See Exhibit A, Subscription Order Tab, Columns U, AH and AI.
16. Neither the NFL, NFL Enterprises, nor any other NFL affiliated entity received payments from Gill for Gill's subscription to Game Pass Season Pro for the 2019 NFL Season or any season thereafter as, starting with the 2019 NFL Season, Game Pass Season Pro was licensed to, sold and operated by OverTier Operations and Deltatre.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the forgoing is true and correct.

Executed on: May 16, 2022

By:

MAX BOIGON